Public Finance Bhd v Jetfast Sdn Bhd

HIGH COURT (IPOH) — ORIGINATING SUMMONS NOS 24-827-833-94 AND 24-1015-94
KANG HWEE GEE JC
1 APRIL 1995

Land Law *— Restraints on dealing — Caveats — Removal — Whether bona fide purchasers for value had caveatable interest — Charge over property registered by mortgagee before caveats entered by purchasers — Priority of interest — National Land Code 1965 ss 254 & 327*

Lots of land were charged to the plaintiff bank on 13 August 1977 as security for a loan outstanding from the developer to the plaintiff. The charge was registered on 16 August 1977. In 1992, the defendants entered into the agreement to purchase two lots which had been charged. The defendants entered caveats on the lots of land. By the originating summons, the plaintiff sought to remove the caveats entered by the defendants.

The plaintiff's case was (1) that the charge was registered in 1977 before the defendants entered into the agreements to purchase the lots in 1992 and the plaintiff's interest should therefore take priority over the defendants' interest as the defendants were aware of the plaintiff's interest in the land; (2) the defendants had no caveatable interest in the land; and (3) the defendants did not take any step which they should take to prosecute their clam.

The defendant's case was that as bona fide purchasers for value of the lots from the developer, they had a caveatable interest which should be protected until such time that the charges were redeemed and transferred to them.

Held, allowing the plaintiff's application:

(1) The plaintiff in the present case was an aggrieved person within the meaning of s 327 of the National Land Code 1965. At the time the land was charged to the plaintiff, it was free of encumbrance. As registered chargees, they held an interest in rem in the property and had every right to protect against any intrusion on the interest. They were entitled to their right to foreclose and have the land sold off unencumbered in the event of the non-payment of the loan by the chargor under s 254 of the National Land Code 1965. Any caveat entered on the land would intrude into their interest as it had the effect of making that interest less marketable thereby reducing its value.

(2) The defendants' failure to use the formatted sale and purchase form of agreement did not operate to invalidate any agreement entered into with the purchasers. In the absence of any further evidence why the parties chose not to use the prescribed

format, such non-compliance was insufficient to find the sales of the lots non bona fide. Moreover, the defendants' failure to exhibit evidence of the consideration could not affect the bona fide of the sales.

(3) The sale and purchase agreement between the defendants and the developer constituted in each case a contract which conferred on the defendants a registrable interest in land and with it the right to caveat under s 323(1)(a) of the National Land Code 1965. In the event, the defendants had caveatable interest in the lots.

(4) In an application by the caveatee under s 327 of the National Land Code 1965, the caveator must first satisfy the court that on the evidence presented to it his clam to an interest in property did raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

(5) The plaintiff was not bound by any contract between the defendants and the developer. Even assuming that the plaintiff had in fact wilfully and wrongly refused to discharge the charges of the lots to the developer as alleged, the defendants would not have any cause of action against the plaintiff. Their only recourse lay with the developer with whom they had privity. As between the plaintiff and the defendants, there was no serious question to be tried. Under the circumstances, there was no need to determine the balance of convenience of the parties.

(6) The mainstay of the plaintiff's case rested on the principle of indefeasibility and priority. In the present case, the charge which conferred the plaintiff with indefeasibility was registered way back in 1977 whereas the purported sales of two lots were made only in June 1992. The plaintiff's interest had priority and the caveats should therefore be removed.

[Bahasa Malaysia summary

Beberapa lot tanah telah digadaikan kepada plaintif pada 13 Ogos 1977 sebagai gadaian untuk satu pinjaman yang dihutang oleh pemaju kepada plaintif. Gadaian itu telah didaftarkan pada 16 Ogos 1977. Pada 1992, defendan telah mengikat perjanjian untuk membeli dua lot yang telah digadaikan dalam tahun 1977. Defendan memasukkan caveat ke atas lot-lot tanah itu. Melalui saman pemula, plaintif memohon untuk mengetepikan kaveat-kaveat yang telah dimasukkan oleh defendan.

Kes plaintif adalah (1) bahawa gadaian itu telah didaftarkan dalam tahun 1977 sebelum defendan mengikat perjanjian untuk membeli lot-lot itu dalam tahun 1992 dan kepentingan plaintif

oleh itu mendapat keutamaan ke atas kepentingan defendan kerana defendan tahu tentang kepentingan plaintif di dalam tanah itu; (2) defendan tidak mempunyai kepentingan yang boleh dikaveatkan di dalam tanah itu; dan (3) defendan tidak mengambil apa-apa langkah yang mereka patut untuk mendakwa tuntutan mereka. A

Kes defendan adalah bahawa sebagai pembeli bona fide untuk nilai lot-lot itu daripada pemaju, mereka mempunyai kepentingan yang boleh dikaveatkan yang patut dilindung sehingga masa apabila gadaian itu ditebus dan lot-lot itu dipindahmilik kepada mereka. B

Diputuskan, membenarkan permohonan plaintif itu:

(1) Plaintif di dalam kes ini adalah seorang yang terkilan mengikut maksud s 327 Kanun Tanah Negara 1965 ('Kanun itu'). Pada masa tanah itu digadai kepada plaintif, ianya bebas daripada bebanan. Sebagai pemegang gadaian berdaftar, mereka memegang satu kepentingan in rem di dalam hartanah itu dan berhak melindunginya daripada apa-apa pencerobohan terhadap kepentingan itu. Mereka berhak menghalang tebus dan menjual tanah itu tanpa bebanan jika pemberi gadaian gagal membayar balik pinjaman di bawah s 254 Kanun itu. Apa-apa kaveat yang dimasukkan ke atas tanah itu akan mencerobohi kepentingan mereka kerana ianya mempunyai kesan membuat kepentingan itu kurang menarik di pasaran dan oleh itu mengurangkan nilainya. C D E

(2) Kegagalan defendan menggunakan borang jualan dan belian yang telah dipersetujui formatnya tidak bertindak mentaksahkan apa-apa perjanjian yang telah diikat dengan pembeli-pembeli. Tanpa apa-apa keterangan lanjut kenapa pihak-pihak tersebut memilih tidak menggunakan format yang diperuntukkan ketakpatuhan tersebut tidak mencukupi untuk menjadikan jualan lot-lot itu tidak bona fide. Lagipun, kegagalan defendan menunjukkan keterangan tentang balasan tidak boleh menjejaskan bona fides jualan itu. F G

(3) Perjanjian jualan dan belian di antara defendan dan pemaju itu membentuk dalam setiap kes satu kontrak yang memberikan kepada defendan satu kepentingan yang boleh didaftar dalam tanah dan dengan itu hak untuk mengkaveat di bawah s 323(1)(a) Kanun itu. Oleh itu, defendan mempunyai kepentingan yang boleh didaftar di dalam lot-lot itu. H

(4) Di dalam satu permohonan oleh penanggung kaveat di bawah s 327 Kanun itu, pengkaveat mesti terlebih dahulu memuaskan mahkamah bahawa mengikut keterangan yang dikemukakan, tuntutannya kepada satu kepentingan di dalam hartanah itu menimbulkan satu soalan yang serius untuk dibicarakan; dan selepas membuat demikian, beliau mesti terus menunjukkan bahawa atas imbangan kesenangan adalah lebih baik untuk mengekalkan status quo sehingga perbicaraan tindakan itu, I

dengan menghalang penanggung kaveat daripada menjual tanahnya kepada pihak ketiga.

(5) Plaintif tidak diikat oleh sebarang kontrak di antara defendan dan pemaju itu. Biarpun dianggap bahawa plaintif pada hakikatnya telah secara sengaja dan salah enggan melepaskan gadaian lot-lot itu kepada pemaju seperti yang dikatakan, defendan tidak mempunyai apa-apa kausa tindakan terhadap plaintif. Remedi bagi mereka terletak dengan pemaju itu yang mempunyai priviti dengan mereka. Di antara plaintif dan defendan, tidak ada soalan serius untuk dibicarakan. Oleh itu, tidak perlu untuk menentukan imbangan kesenangan di antara pihak-pihak itu.

(6) Tapak kukuh bagi kes plaintif adalah prinsip ketakbolehsangkalan dan keutamaan. Di dalam kes ini, gadaian yang memberikan kepada plaintif ketakbolehsangkalan telah didaftarkan pada tahun 1977 walhal jualan kedua-dua lot yang dikatakan itu cuma dibuat pada Jun 1992. Kepentingan plaintif mempunyai keutamaan dan kaveat-kaveat itu oleh itu patut diketepikan.]

Notes

For cases on caveats, see 8 *Mallal's Digest* (4th Ed), paras 1687–1775.

Cases referred to

Eng Ah Mooi & Ors v Overseas Chinese Banking Corp [1983] 1 MLJ 209 (refd)

Eng Mee Yong & Ors v Letchumanan [1979] 2 MLJ 212 (folld)

Hew Sook Ying v Hiw Tin Hee [1992] 2 SCR 257 (refd)

Malayan Banking Corp Bhd v Development and Commercial Bank Bhd [1983] 1 MLJ 165 (refd)

Malayan United Finance Bhd v Tan Lay Soon [1991] 1 MLJ 504 (folld)

RAP Nathan v Haji Abdul Rahman bin Yusoff & Ors [1980] 1 MLJ 248 (refd)

Toh Kian Hin v Ting Ding Woi & Anor [1987] 1 MLJ 40 (refd)

United Malayan Banking Corp Bhd v Development and Commercial Bank Bhd [1983] 1 MLJ 165 (refd)

Legislation referred to

National Land Code 1965 ss 254, 323(1)(a), 327

Housing Developers (Control and Licensing) Regulations 1989 r 11

KL Low (*Soo Thien Ming & Shahrizat*) for the plaintiff.

Gurbachan Singh (*Bachan & Kartar*) for the defendants in Originating Summons Nos 829, 832, 833 and 1015.

Kerpal Singh (*Harcharan & Kerpal*) for the defendants in Originating Summons Nos 827, 828 and 830.

Kang Hwee Gee JC: *Background*

By these originating summons the plaintiff is seeking to remove caveats entered by the respective defendants on the lots of land which they had purchased from Hock Seng Housing Development Sdn Bhd, a housing developer.

The defendants in Originating Summons Nos 827, 828 and 830 were represented by Encik Kerpal Singh and those in Originating Summons Nos 829, 832, 833 and 1015 by Encik Gurbachan Singh. In the hearing before me the parties agreed that as the facts relied by them and the law in all the originating summons are identical (save for differences in considerations, dates of agreements and entry of caveats) in order to save time the court should hear only Originating Summons No 828 ('OS 828') and Originating Summons No 832 ('OS 832') together. They agreed that my decision in the two summons should bind the rest. Further, Encik Kerpal Singh intimated that he would not be making any submission and would adopt the submission of Encik Gurbachan Singh.

OS 828 is an application by the plaintiff under s 327(1) of the National Land Code 1965, to remove a private caveat No 5489/92 Jilid 834 Folio 28 lodged by the defendant Jetfast Sdn Bhd, on land HS(D) KA 3250/75 Lot 66581 Mukim Kampar on 8 November 1992.

OS 832 is a similar application in respect of private caveat No 3626/92 Jilid 815 Folio 65 lodged by Gurbachan Singh a/l Bagawan Singh, an advocate and solicitor who is himself the defendant, on land HS(D) KA 3256/75 Lot 66587 Mukim Kampar on 15 July 1992.

The difference between OS 828 and OS 832 appears to be the consideration applied by the defendants to the purchase price of the respective lots. In OS 828 the purchase was for a cash consideration (vide the sale and purchase agreement OKE 1 in defendant's affidavit, encl 4), whereas in OS 832 the purchase was by way of set off against the services rendered to the developer by the defendant as their advocate and solicitor (vide sale and purchase agreement GS 1 in defendant's affidavit encl 3).

The following facts are undisputed.

The lots of land which were caveated by the defendants were charged to the plaintiff bank on 13 August 1977 together with other lots by the developer, the registered proprietor, as security for a loan. The charge was registered on 16 August 1977 vide Presentation No 7727/77 Jilid 635 Folio 36.

In respect of the present charge the loan still outstanding from the developer to the plaintiff was only RM55,000 (see GS-3 in defendant's affidavit in reply encl 3 in OS 832). Sometime in 1989 the plaintiff (presumably acting under the term of the loan agreements annexed to the charges) had applied by Originating Summons No 24-257-89, to consolidate the loan in respect of the charge with the loan secured by another charge on another property of the developer, the effect of which would make the developer liable to repay back both the loans

before they could obtain a discharge of the charge in respect of the present lots of property. The application was dismissed by the High Court on 19 January 1991 and the decision was confirmed on appeal to the Supreme Court (see GS 7 and GS 8 encl 3 in OS 832).

The developer had made attempts to settle their outstanding loan of only RM55,000 in respect of the outstanding lots (including the present lots purchased by the defendants) which still remain charged to the plaintiff. The plaintiff refused to accept the developer's tender of payment insisting that the developer should settle not only the sums due in respect of the present charge but also the outstanding loan in respect of the other charge on other lands mentioned earlier.

Plaintiff's case

The affidavits in support of the application sworn by the manager of the plaintiff bank at Kampar, Yap Choon Huat state four common grounds why the caveats lodged by the defendant in the two summons should not be allowed to remain, but before me plaintiff's counsel Encik KL Low proceeded only with the following three grounds:

1 The charge in favour of the plaintiff had been registered since 16 August 1977 and the defendant was aware of the plaintiff's interest in the said land. The defendants in the two summons only entered into the agreement to purchase the said lot on 12 June 1992 and 10 February 1992. The plaintiff's interest therefore takes priority over both the defendants' interest.

2 The defendants had no caveatable interest in the said land.

3 The defendants did not take any step which they should take to prosecute their claim.

Defendants' case

From the affidavits in opposition of the defendant company director Ong Kui Eng in OS 828 (encl 4) and the defendant Encik Gurbachan Singh in OS 832 (encl 3), it is clear that their opposition to the plaintiff's application is on the common ground that as bona fide purchasers for value of the lots from the developer they have a caveatable interest which should be protected until such time that the charges are redeemed and transferred to them.

It was clear, they contend, from the refusal of the court to allow consolidation of the two loans that the developer had the legal right to redeem the charged lots by paying the outstanding loan of RM55,000 and obtain the discharge of charge of the lots thereby enabling the lots to be transferred to them. In the event, the defendants contend, their caveats should be allowed to remain to maintain the status quo until such time that the charged lots are discharged. According to Encik Gurbachan the developer had already commenced proceedings seeking a declaration that they are entitled to redeem the lots and the application is pending before the court, although nowhere was this stated in the

defendants' affidavit. The balance of convenience, he submitted, leans in favour of preserving the caveats. A

Basic issues

Before I proceed to consider the substance of the plaintiff's application two basic issues raised by the parties need to be settled viz: B

(A) whether in the first place the plaintiff is an aggrieved person within the meaning of s 327 of the National Land Code 1965 failing which they would not have the right to apply for the removal of the caveats and,

(B) whether the defendants in fact have caveatable interest failing which the defendants would not have the right to caveat the lots under s 323(1)(a) of the National Land Code 1965. C

The first issue requires careful deliberation. In his affidavits in support in both the cases the plaintiff's manager Yap Choon Huat contends that the existence of the caveats hinders and causes hardship to the plaintiff D in the exercise of their right of sale of the lots which counsel for the plaintiff submitted therefore made the plaintiff an aggrieved person. On the other hand Encik Gurbachan argued that the plaintiff could only become an aggrieved person if they had commenced foreclosure proceedings which they had not in these cases. No authority nor any E persuasive reasoning was however, submitted for this proposition.

Who then in law is a 'person or body aggrieved'?

The dictionary meaning of 'aggrieved' means 'to give pain or sorrow; to grieve; to bear hard upon; to oppress or injure in one's rights.' (*New Webster Dictionary of the English Language*). The words F 'person or body aggrieved' in s 327 therefore in my view, convey no more than the ordinary meaning of person who is affected by the lodgement of the caveat. Had the legislature intended a narrower meaning it would have provided otherwise.

However, in *United Malayan Banking Corp Bhd v Development and* G *Commercial Bank (Ltd) Bhd* [1983] 1 MLJ 165 the former Federal Court appears to have given the term some legal significance. It was held that an offer by a third party to buy the land which was charged to the respondent was sufficient to make the respondent chargee an aggrieved person to apply for the removal of the caveat entered by the appellant. But the court in that case did not define the scope of grievance H that must be established before a person or body can be considered aggrieved thus leaving the categories open.

The Federal Court in that case also did not disapprove of the wide test applied in *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1980] 1 MLJ 248, 250 referred to in the appeal, which applied the I simple test of whether the applicant 'will suffer loss if the caveat lodged by the plaintiff was not removed'. In that case the applicant was a previous proprietor of the land that was caveated and his interest when

he applied for the removal was only in a joint venture housing agreement he entered into with the new proprietor in which he would be deriving some benefits. It was held (per Syed Agil Barakbah J) that:

> In the circumstances, as the facts present, the third defendant (the applicant) falls within the meaning of a person aggrieved by the existence of the caveat under s 327(1) and may apply to the court for an order of its removal by an ex parte application.

I am of the considered view that the plaintiff in the present case is an aggrieved person. At the time the land was charged to the plaintiff it was free of encumbrance. As registered chargees they hold an interest in rem in the property and have every right to protect against any intrusion on the interest. They are entitled to their right to foreclose and have the land sold off unencumbered in the event of the non payment of the loan by the chargor under s 254 of the National Land Code 1965. Any caveat entered on the land would intrude into their interest as it has the effect of making that interest less marketable thereby reducing its value.

On the second issue raised by the plaintiff that the defendants did not have caveatable interest in the land they caveated, their case rests not on the legality of the interests but on the integrity of the sale and purchase agreements (OKE 1 in encl 4 in OS 828 and GS-1 in encl 3 in OS 832). The agreements, it was contended, expose two inconsistencies thereby affording grounds to doubt the bona fides of the sales.

The first was that the forms of the sale and purchase agreements used in the transactions were not in the format prescribed under reg 11 of the Housing Developers (Control and Licensing) Regulations 1989, and in fact different from the format used in respect of other sales to other purchasers which complied with the format prescribed. There was, therefore, plaintiff's counsel submitted, a reason to doubt the bona fide of the sales in which case there could be no caveatable interests in favour of the defendants.

It is clear to me that the failure to use the formatted sales and purchase form of agreement does not operate to invalidate any agreement entered into with the purchasers, but merely exposes the developer to a penalty under the Regulations. In the absence of any further evidence why the parties chose not to use the prescribed format, such non-compliance is in my view insufficient to enable me to find the sales of the lots non bona fide.

The second was the failure of the defendants to exhibit any evidence of the considerations in the purchase of the lots by the defendants. In OS 828 the consideration for the purchase was for the sum of RM45,000 in which only the sum of RM5,000 had been paid with the balance to be paid after the delivery of the unencumbered issue document of title. In OS 832 the consideration was by way of set off against legal fees payable to the defendant as the developer's lawyer. I fail to see how the

failure of the defendants to exhibit evidence of the considerations could affect the bona fide of the sales. In both the cases the considerations were stated and acknowledged by the parties in the respective agreement.

Under s 323(1)(a) of the National Land Code 1965 a private caveat may be entered by ...

> any person or body claiming title to, or any registerable interest in, any alienated land or any right to such title or interest.

It is clear that the sale and purchase agreements with the developer constitutes in each case a contract which confers on the purchaser defendant a registerable interest in land (that is to say a right in personam against the developer which would in due course convert into a right in rem upon registration of transfer) and with it the right to caveat under s 323(1)(a). In the event I am bound to hold that the defendants do have caveatable interest in the said lots.

Issues following

Having decided on the primary issues I will now have to examine the plaintiff's applications in accordance with the established principles enunciated in the oft cited case of *Eng Mee Yong & Ors v Letchumanan* [1979] 2 MLJ 212 at p 215B where it was held that in an application by the caveatee under s 327 for the removal of the caveat, the caveator:

> ... must first satisfy the court that on the evidence presented to it his claim to an interest in property does raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

It would appear from the submission of Encik Gurbachan Singh on the first limb of the dictum, all that the caveators need to show is that they have a serious question to be tried as against the developer Hock Seng Housing Development Sdn Bhd. For its clarity and brevity however, *Eng Mee Yong* (supra) does not state in clear terms whether by the phrase 'the serious question to be tried' is meant only question that arises strictly as between the caveator and caveatee or extends to all questions affecting the caveator's claim in respect of his interest in the land against other persons such as the developer in the present summons, although in the context of that case it could be implied to mean the former. However, this question was decided by the Sibu High Court by Chong Siew Fai J as he then was, in *Toh Kian Hin v Ting Ding Woi & Anor* [1987] 1 MLJ 40, which clearly restricts such questions only against the caveator, a decision which I am in total agreement with.

In that case it was held that the plaintiff, a bona fide purchaser of land from a 'beneficiary' who had obtained a fraudulent transfer of the land from the defendants' brother, was entitled to have the defendants' caveat removed under s 327, there being no serious question to be tried as against the plaintiff. Although the defendants had alleged fraud and

other matters against the brother and the beneficiary it was held that they are 'separate and distinct and have no connection with and ought not to be imputed on the plaintiff'.

There could be no doubt in the present summons the agreements imposed upon the developer an obligation to deliver the lots free from encumbrance to the defendants, which means that they would have to obtain discharge of the charges from the plaintiff before the lots could be transferred to the defendants. The developer's failure to do so could no doubt lead to a breach of the sale and purchase agreements. I have therefore no reason to disagree with Encik Bachan Singh that there is a serious question to be tried with regard to the defendants' right to the lots they had purchased. But that question only arises as between the defendants and the developer and not between the defendants and the plaintiff. The plaintiff is not bound by any contract with the defendants nor were they privy to any agreement between the defendants and the developer. It is not disputed by the plaintiff that the sums still owed by the developer in respect of the charge was only some RM55,000 which could have been discharged had the plaintiff not insisted on the consolidation of the loans. But even assuming that the plaintiff had in fact wilfully and wrongly refused to discharge the charges of the lots to the developer as alleged, the defendants would not have any cause of action against the plaintiff. Their only recourse lies with the developer with whom they have privity. As between the plaintiff and the defendants, there is clearly no serious question to be tried.

Having found the first prerequisite absent it follows that the caveats should not be allowed to remain. I need not, therefore, proceed to the next step of determining the balance of convenience of the parties. Neither do I need to consider the third point raised by the plaintiff on the defendant's failure to timeously prosecute their claim after having lodged the caveats as decided in the Supreme Court case of *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 cited by the plaintiff's counsel. But if a ruling is required I would state that this requirement would not apply in the present situation. The sales of the lots were subject to the discharge of the charge and the lodgement of the caveats by the defendants were made with the intention of protecting their interests pending the settlement of the outstanding loan in respect of the charge by the developer to the plaintiff after which the lots could then be transferred to the defendants. It is clear from the defendants' affidavits the impediment to the completion of the sales lies with the plaintiff who had rejected the developer's tender of payment to discharge the charge. Until the developer refuses to perform his part of the bargain to transfer the lots to the defendants after discharging the charge there is no cause of action against the developer.

Indefeasibility and priority of the plaintiff's interest

The mainstay of the plaintiff's case rests not on the principle in *Eng Mee Yong* (supra) but on the principle of indefeasibility and priority as enunciated in the Supreme Court case of *Malayan United Finance Bhd*

v Tan Lay Soon [1991] 1 MLJ 504, which Encik KL Low canvassed in earnest before me. In considering whether the caveats should be allowed to remain as against the plaintiff chargee who has in fact acquired indefeasibility under s 340 of the National Land Code by reason of the charge having been registered, it would appear from that case that the same decision could be pronounced in favour of the plaintiff. Assuming that I am wrong in my ruling that there was no serious question to be tried between the plaintiff caveatee and the defendant caveators in the present summons, the plaintiff should in my view be allowed to succeed on this ground alone.

In that case the appellants were chargees of certain lands in Penang. The respondent had lodged two caveats on the lands which was based on a purported agreement by the registered proprietor to sell the lands to him. The respondent's proposition that as against the chargee he has a statutory right of discharge of the charge under the National Land Code or the equitable right of redemption similar to the right of a mortgagor in English law (as decided in the earlier Federal Court case of *Eng Ah Mooi & Ors v Overseas Chinese Banking Corp* [1983] 1 MLJ 209) was rejected. That right, it was held, vested not in the caveator but in the chargor who alone could exercise it. It was held that the chargee had an indefeasible right and priority as against the respondent caveator by virtue of the registration of the charge which was made some five years before the caveats were lodged and therefore the caveats should be removed.

The facts in *Malayan United Finance Bhd* appear to be almost on all fours with the facts in the present summons and in my view the same law could be applied. The charge which confers the plaintiff with indefeasibility was registered way back in 1977 whereas the purported sales of the two lots were made only in June 1992. Clearly in the present summons the plaintiff's interest has priority and the caveats should therefore be removed.

As agreed between the parties, the same order should apply with regard to the other originating summons.

Application allowed.

Reported by Richard Khaw